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Book Review: Time, Temporality and Legal Judgment Tanzil Chowdhury

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TANZIL CHOWDHURY, *Time, Temporality and Legal Judgment*. London: Routledge, 2020, pp. 172, ISBN 9781138324503, £120 (hbk).

Time, Temporality and Legal Judgment is the most recent contribution to what its author Tanzil Chowdhury describes as the ‘nascent “temporal turn” in socio-legal studies, legal anthropology and jurisprudence’ (2020: 145). Chowdhury is correct that socio-legal scholars have increasingly turned their attention to time and have begun to offer a range of new ways to understand law, legal processes, institutions and discourses through this lens (Beynon-Jones and Grabham, 2018; Grabham, 2016; Keenan, 2013; McNeilly, 2019; Mawani, 2014). This work has revealed a variety of ways in which law produces time and how legal times connect to the social (Greenhouse, 1989). Chowdhury’s contribution to this growing literature is to place focus on adjudication – specifically within the field of criminal law – and render visible the temporal building blocks that provide the foundations of this juridical practice. The book lies at the intersection of multiple bodies of thought, which are woven together in a complex and enlightening way. These bodies include not only law and time literature but also theories of adjudication and a variety of philosophical literature on time. The result is an approach that makes a stimulating new contribution to advance socio-legal thinking on time, as well as offering insights in the wider fields of criminal law, adjudication, and jurisprudence.

The book’s central claim is that legally produced times – or what Chowdhury terms ‘adjudicative temporalities’ (2020: 2) – serve to influence fact construction in legal judgment and, in turn, structure how the legal event and subject are formed. This claim flows from de-centring the primary influence of legal rules. Instead, the reader’s attention is turned to adjudicative temporalities as driving legal adjudication and the facts, events and subjects that are apprehended within it. Importantly for Chowdhury, the selection or use of adjudicative temporalities by a judge is influenced by wider social structures. The result is that ‘through temporality juridical power is articulated’ (2020: 2). The book’s analysis, therefore, seeks not just to describe the role of time in adjudication, but also to uncover the potential for legal judgment to reach outcomes which are socially just. Adjudicative temporalities accordingly come into view as ‘a particular type of legal temporality’ (2020: 25) which stand to be further explored and considered.

In illustrating this overarching thesis, ‘two antipodal types of legal judgment’ are articulated. These are distinguished with reference to the adjudicative temporalities that they employ (2020: 8). The first is referred to as ‘Abstract Legal Judgment’. This is defined by a spatial past alongside linear teleological futures. Events in this approach are

divisible, sequenced, ‘placed adjacent to one another and selected to generate a chronology’ (2020: 71). The legal subject in turn emerges as one who is not situated or embedded within broader histories and circumstances. The second type of legal judgment, ‘Concrete Legal Judgment’, contrasts markedly with this. Framed using a collection of resources including Henri Bergson, Hans-Georg Gadamer, Gilles Deleuze and Elizabeth Grosz, this approach is defined by an enduring and sedimented past as well as untimely futures which do not necessarily flow in a linear manner. Resultantly, in Concrete Legal Judgment the legal event is understood in a qualitatively different way – the past no longer being divisible but interconnected and enduring – and the legal subject appears as ‘embedded and constituted by other types of pasts’ (2020: 95). It is this second form of legal judgment which Chowdhury sees as holding potential to facilitate socially just outcomes, albeit it is ‘non-conventional and under-utilised’ in practice (2020: 94).

To explore these two approaches to adjudicative temporalities the book usefully draws from a range of case law and wider legal examples. Particularly apt is discussion of *R v. Ahluwalia*,¹ a criminal case pertaining to homicide in the context of domestic abuse that will be familiar to many readers working within the UK legal system. The *Ahluwalia* case acts as an effective conceptual anchor throughout many of the book’s chapters. The reader comes to apprehend this case as epitomising the distinction between Abstract and Concrete Legal Judgment. At trial, the past event of Ahluwalia’s fatal attack on her husband was understood as a divisible, discrete moment in time and the legal subject as agentic, largely unembedded in a broader past. This led criminal responsibility for murder to be ascribed. In contrast, on appeal, following the emergence of fresh medical evidence, a broader, enduring and sedimented past was engaged which understood the past experience of sustained domestic abuse as relevant to the legal event, creating a subject who was situated and embedded. The future envisaged as a result was untimely, breaking with expected linear trajectories to determine legal responsibility differently via diminished responsibility. Chowdhury’s argument is that the differences in fact construction here are not determined by any legal rule, but by the judges’ different approaches to temporality.

For those interested in law, time and judgment, the arguments presented in the book’s contribution offer a very useful starting point for further discussion and analysis. Following apprehension of the work’s central thesis, there are a number of routes that this might take. I wish to highlight just three of these in mapping where discussion might go next in relation to law, time and adjudication. In drawing attention to adjudicative temporalities as an important, and under-explored, part of fact construction in legal judgment, *Time, Temporality and Legal Judgment* encourages lawyers to consider the abstract or concrete nature of any legal judgment they encounter. Chowdhury makes clear that these approaches exist on a spectrum rather than a binary (2020: 8), and that judgments can be placed anywhere between these two poles. In expanding the insights of the work further, as a first step readers can be encouraged to explore more of this spectrum, considering how – and which – cases fall at different places on it. In the book’s introduction and the substantive chapters dedicated to Concrete and Abstract Legal Judgment (Chapters 3 and 4), discussion largely explores the binary distinction between them. This helps to effectively outline the two ends of the spectrum. The next

stage in taking up and applying Chowdhury's framework may involve work towards a deeper understanding of the nuance of the legal judgment spectrum when it comes to adjudicative temporalities and their playing out in everyday adjudication. This includes conversation with additional case law to apprehend the full spectrum in between the spatial and linear on one hand and the enduring, sedimented and untimely on the other.

A second step in expanding our discussion further might involve bringing into view other temporalities which appear in and guide legal judgment beyond past and future alone. Thinking on law and time has to date presented a rich tapestry of temporal ideas, rhythms and movements characterising law and legal practices. These include concepts of balance, likelihood, retrogression, cyclicity and discontinuity, just to name a few. It is likely that the temporalities engaged in legal judgment may be just as diverse, and that additional ideas of time beyond pasts and futures alone are engaged in construction of legal facts. It is important to create space to apprehend these times, and their significance for the legal event and subject, in tandem with the more traditional temporal ideas of past and future. These wider ideas of time may be more 'specific and mundane' (Grabham, 2016: 11) but they nevertheless hold potential to also shape the event, the subject and the legal outcomes that emerge from adjudication in important ways. Work might be undertaken to identify these additional temporalities and how they operate alongside the pasts and presents which are at work in the spectrum between Abstract and Concrete Legal Judgment.


Alongside opening up to discussion of additional forms of time and their significance, third, Chowdhury's arguments may stimulate us to consider how adjudicative temporalities in fact construction sit alongside other temporal elements or forces also present within adjudicative processes. This includes, very importantly, the temporalities of precedent which frequently appear as a subject of law and time literature (French, 2001; Greenhouse, 1989; Tur, 2002). While the overarching drive of the book is to de-centre legal rules – which is achieved to convincing effect – these rules and the more general system of precedent that they are connected to in their common law form remain a part of adjudication in some respect. The temporal operation of precedent – including, for instance, its reversibility – stands to be brought into conversation with the adjudicative temporalities shaping fact construction to explore the connections, tensions, and possible points of convergence that might exist across different temporal forces at work in adjudicative processes. This is not to derail a focus on time in fact construction, collapsing it back into precedent and rules, but to explore the relationship between the two in a holistic way.

These points for further discussion demonstrate the fruitful lines of analysis that the book's contribution holds potential to stimulate, highlighting some of the paths we might follow to build on, probe and question its insights further. It is only through this work that we can come to better understand time in this area and render its work less invisible. The contribution that the book makes in itself, however, should not be under-estimated. As Chowdhury comments, 'attempts at unpacking the temporalities of adjudication have been occasional, less so in relation to fact construction' (2020: 34). The novelty of Chowdhury's approach lies in the potential it holds to both bring a socio-legal understanding of time to thinking on adjudication, and to bring adjudication more firmly into the purview of socio-legal work on time. Overall, the book adds to a growing tradition

that tells us understanding time in law, rather than law in time (Chowdhury, 2020: 23–49), is important and that much remains to be done to build on our existing frameworks for such understandings. *Time, Temporality and Legal Judgment* is undoubtedly instructive in this work and creative in the new paths of apprehension, examination and analysis that it sets us on.

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Note

1. [1992] 4 All ER 889; (1993) 96 Cr App R 133.

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